

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 2121 - HB 2232

March 5, 2018

SUMMARY OF BILL: Establishes that state and local sales and use tax on sales of water by a public utility only applies to charges on a customer's monthly water bill for metered water usage, a monthly minimum bill, a monthly customer charge, or a monthly demand charge.

Establishes that state and local sales and use tax on sales of natural gas, propane, and electricity by a public utility and sold directly to the consumer for non-residential use, applies only to charges on a customer's monthly bill for metered usage, a monthly minimum bill, a monthly customer charge, or a monthly demand charge.

ESTIMATED FISCAL IMPACT:

Forgone State Revenue - \$5,435,200

Forgone Local Revenue - \$1,787,700

Assumptions:

- This legislation prevents the application of state and local sales and use tax
- Based on information received from the Tennessee Association of Utility Districts (TAUD), certain fees charged to customers, such as connection and reconnection fees, have historically not been subject to sales tax.
- Based on information provided by the TAUD, the TAUD, Municipal Electric Power Association, the Tennessee Electric Cooperative Association, and Tennessee Gas Association each inquired of their member facilities and determined that not one utility district had ever, to their knowledge, collected state and local sales and use tax on connection or reconnection fees.
- The TAUD provided no legal basis for not paying the tax on such fees; however, due to the survey provided by the aforementioned Associations, it is assumed that there is prima facie evidence that the tax has not been levied against these fees.
- Based upon information provided by the TAUD, the issue that is subject to this legislation arose after the Department of Revenue (DOR) performed an audit of the City of Lebanon and the DOR assessed Lebanon for the non-payment of sales tax on the connection fees which someone pays when they sign up for service and reconnection

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fees paid when a customer is terminated for non-payment and must pay the fees to get the service turned back on.

- Based upon information provided by the DOR, it confirms that an audit made it aware of such issue.
- It is currently unknown if the DOR has performed additional, past audits of utility districts and whether this issue was a finding; however, based on information provided by the DOR, the department was unaware that the tax was not being collected, and fully expects to collect such tax in the absence of this legislation.
- This legislation will prohibit the DOR from collecting state and local sales and use tax on certain charges imposed by a public utility for water and certain charges imposed by public utilities for the non-residential uses of natural gas, propane, and electricity.
- According to information provided by the DOR, it is not known how much sales and use tax should be collected from these fees.
- The DOR used the aforementioned audits to predict the amount of sales tax that would be owed in the absence of this legislation.
- Based on the results of such audits, the average annual state and local sales and use tax owed on these charges are as follows:
 - Water:
 - State Sales Tax: \$2,221,304;
 - Local Sales: \$755,652;
 - Natural Gas:
 - State Sales Tax: \$1,067,755;
 - Local Sales: \$342,857;
 - Electricity:
 - State Sales Tax: \$2,146,188;
 - Local Sales: \$689,143;
 - Propane:
 - State Sales Tax: Not Significant;
 - Local Sales: Not Significant;
 - Total:
 - State Sales Tax: \$5,435,247;
 - Local Sales: \$1,787,652
- Due to the DOR becoming aware that this tax isn't going to be owed and collectible under the provisions of this legislation, it is assumed that this tax would be owed and is collectible in the absence of this legislation. However, based on all information received, and to the best knowledge of Fiscal Review Committee staff, there is no evidence that supports sales tax is currently being collected on these fees; therefore, this legislation is estimated to result in forgone state revenue of \$5,435,427 and forgone local revenue of \$1,787,652.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/jdb